

BUSI 2601 Midterm Review (Covering Ch. 1-4,13,14,28)

Part 1-The Legal Environment of Business

Ch.1 (Knowledge of Law as a Business Asset) (pg.1):

Business Law: (pg.4)

- defines general rules of commerce
- protects business ideas and more tangible forms of property
- provides mechanisms that permit businesspeople to select their desired degree of participation and exposure to risk in business ventures
- seeks to ensure that losses are borne by those who are responsible for them
- facilitates planning by ensuring compliance with commitments

An understanding of the law allows businesspeople to maximize opportunities and prevents them for losing out on them altogether (pg.4)

Law is a set of rules and principles intended to guide conduct in society, primarily by protecting persons and their property, facilitating personal and commercial interactions, and providing mechanisms for dispute resolution (pg.5)

Contract Law- rules that make agreements binding and therefore facilitate planning and the enforcement of expectations

- allows business enterprises to plan for the future and to enforce their expectations (pg.8)

Providing Mechanisms for dispute resolution:

- first logical step is for parties to try to come to a resolution b/w themselves and produce, if necessary, a formalized settlement agreement
- if this doesn't work, legal system offers mediation (assistance through a neutral party) and arbitration (decision (usually binding) made by a neutral party) as ways of avoiding litigation (pg.10)

Legal Risk Management Plan- A comprehensive action plan for dealing with the legal risks involved in operating a business (pg.13)

-Law involving ethics issues

- minimum threshold standard

-If something is lawful, does it meet with business ethics-not always

Common Law vs. Civil Law

Common Law:

- rules that are defined by British Courts, based on precedents
- use court decisions to make our legal principles and then apply them to the facts

Civil Law:

- very strong, established procedural system
- notaries and lawyers are two separate professions in Quebec
- If the lawyers do not provide a solution, the judge can not act

-Notion of Common Law Marriage or Marriage in Law

- if you want to get a divorce, your residence determines what rules are applied (no prenuptial agreements in Quebec)

Dispute Resolution: Main Areas where we have disputes

- disgruntled clients-don't pay, not satisfied with products/services they are receiving
- motor vehicles
- regulatory norms-norms we have that define the product, service, or conduct (i.e., pollution->dumping)
- labour relations- contracts and doings
- Contractual relationship-marriage
- Private Rights

Mediation- An independent third party that will help bring compromise and a settlement to a dispute

- must show independence and be impartial
- have to negotiate the terms (4 elements):
 - 1) Willingness of the parties to compromise
 - 2) Priorities in the negotiations
 - 3) Techniques of negotiation/leverage
 - 4) Be able to define the result of the negotiation

Arbitration-independent party that will determine the outcome of the conflict and will impose a binding settlement that is without appeal

- don't want to lose political power to negotiate
- all the information must be released in order for the arbitrator to make an informed decision

Litigation- There is a conflict that needs to be resolved before the courts

- 1) **Apply Limitations Act:** Legislation that provides a limitation (max. 2 years) to commence a proceeding when the event occurred (reasonable to have known when the case started)
- 2) **Civil Proceedings**-file a statement of claim-file a case where you argue why you have this claim (i.e.-suing subway for misrepresentation-selling you an 11-inch sub instead of the full 12-inches as advertised)
- 3) **Response**-20 days to provide a defense-may include a counter-claim
- 4) **Discovery**-put evidence forward and showcase what we have in terms of content of

evidence

- 5) **Trial**-Prove your claim on the balance of probabilities
- 6) **Judgment and Court**-30 days to appeal decision

Part 1-The Legal Environment of Business

Ch.2 (The Canadian Legal System) (pg.21):

Canadian Charter of Rights and Freedoms: 'defines fundamental values we share as Canadians'

→ A guarantee of specific rights and freedoms enshrined in the Constitution and enforceable by the judiciary.

-Created in 1982, signed by Pierre Elliot Trudeau

-A guarantee of specific rights and freedoms enshrined in the Constitution and enforceable by the judiciary

Freedoms-when you are in Canada, these freedoms belong to you as well

→ freedom of conscience - good and bad ie. music in the yard

→ freedom of religion - idea of superior force; enhance human goodness

THE CHARTER IS CHANGING HOW WE DO BUSINESS:

→ **Democratic Rights:** right to vote and express political choices

→ **Mobility rights:** capacity to enter and leave Canada

- passport belongs to gov't of Canada and is not proof of Canadian Citizenship

- allows you to enjoy mobility rights and international travelling agreements (ex. Canadians buying cheap land in Cuba as investments)

- French-Canadian builder who went to Austria to sell his painting collection because there was no Canadian extradition agreement with Austria. He then went on to become the largest developer in Berlin. → Those who have money already know what to do, others follow

-A criminal record is 'the end' of mobility rights to the U.S.

- Presidential Pardon: When you are 18, any crimes committed under that age as a juvenile are pardoned in Canada and your record is cleared, however, in the U.S., you would require a Presidential Pardon

-Not able to bid on certain contracts if you have employees who aren't Canadian citizens or have a dual citizenship with Canada and some other country that is not the same as the one in the country of the contract for which you are bidding

- **Legal Rights:** Relationship we share with the state and we get certain protection measures
- i.e.; -right against unreasonable search
 - right to life (ex. Hospital can sell placenta or you can decide to keep it, however, you may not sell your own placenta, semen, or any of your own body parts)

Starbuck(Quebec film about a sperm donor who supposedly fathered over 500 kids)

-Who would give semen where confidentiality is not ensured? (ex. A kid shows up on your doorstep 30yrs later, tells you that they are your child and seeks legal rights against you)

-You must be born alive in order to have legal rights as a human being. However, choosing one of two embryos to be born (ie. Choosing a male over a female in China) is illegal because it is discrimination

- **Official Languages:** English and French in Canada, national language is Native
- You need to speak both languages to advance in the Cdn. Gov't

NOTION OF ENFORCEMENT

1. Courts have all the legal authority to impose a redress (correction) measure wherever there is a violation to the charter.
 - Bill Clinton vs. Monica Lewinski - she had kept a dress with his semen on it in a drawer for a year, however, no proof of penetration of the vagina
- if you lie, and then confess later, the lie can be stretched by opposing parties and you cannot be trusted (i.e.; Lance Armstrong using PED's)

In a hospital, accelerating the process of death (extra morphine, for example) is a first degree murder charge

*Court is the guardian of all our values

2. Disrepute of the administration of justice
 - if evidence is obtained in methods that are in violation of the law, that evidence becomes invalid and unusable in the courts

What is a free democratic society?

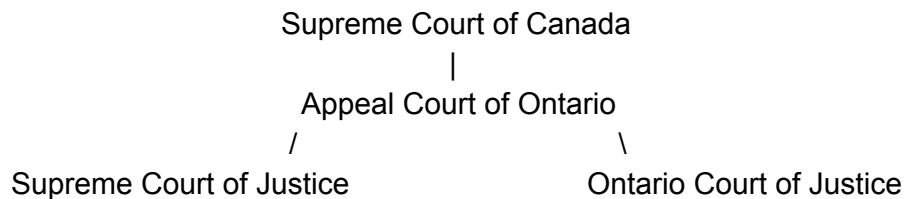
-When can we have a policy that violates our fundamental rights (i.e.; wearing a seatbelt)

-Judged by the Oakes test-we have to pass a test to justify that restriction

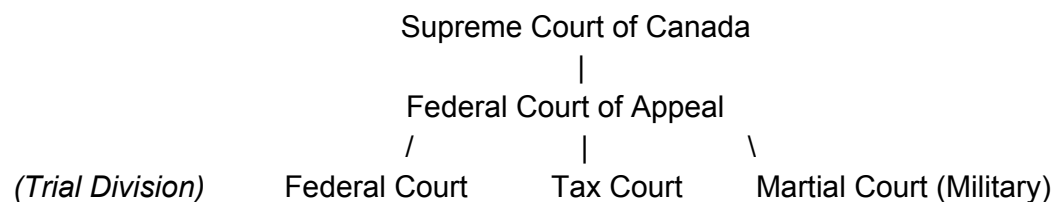
1. We need to identify the objective of that restriction (why are we doing it?)
 - seatbelt trying to accomplish safety and health of all citizens
2. Notion of proportionality elements - we need demonstrate that the means we are using are proportional to the objectives:
 - a. Done through a legislation process/act
 - b. Have to find the means that are less restricted
 - c. Has to be a link between objectives and means and has to be of significant importance

Canadian Justice System:

Ontario:



Federal:



The Legislative Branch passes laws that impact on business operations while the Executive Branch implements and generates policy

Common Law - Ontario

Rules that are formulated in judgements

→ Apply rules that are defined by the British courts

- Use these court decisions to create legal principle and then apply them to the facts -- known as distinguishing
- India is going to be big - limitations on infrastructure and capacity

Civil Law - All of Latin America and Europe except the UK

→ Mirror of the French Civil Code

- *Civil Code of Quebec*: The rules of private law that govern Quebec.
- Logic and rule behind everything
- Napoleon applied this through colonization

→ so precise that if you do not understand, it's bad

→ Africa is half common law and half civil law

Part 9-Transference of Risk

Ch.28 (Insurance) (pg.707):

Insurance-Protection

-when an event occurs that will cause hardship or losses against things that are unpredictable, but do happen

Types of Insurance:

-Whole Life and Disability Insurance

-Even if you smoke occasionally when drinking, you are still considered to be a smoker under the law

-Property Insurance (Fire Insurance)

-amount to cover your property and assets

-insurance in Canada only covers jewelry for up to \$2,000

-Liability Insurance

-You've done something wrong and need to be protected. Tort or wrong doing committed

-You may say something that is inappropriate against another person via social media, for example

Clauses of Insurance Contract

-There has to be an insurable interest-Has to be ownership of the goods

-A deductible is your loss that you accept as an insured party

-Duty to disclose-obligation to provide all of the necessary information to understand the risk

Forfeiture- Can not take advantage of a bank

Coinsurance-minimum requirement for insurance on the assets (on a house, need at least 90% to be covered)

Subrogation-The rights of a party are transferred to another party in order to pay for the value of the claim

-Someone will take over your rights and sue on your behalf (ex. Car insurance-have someone else pay you to sue on your behalf, and take any claim that is rewarded)

Duty of Doing Good- You cannot have multiple insurance to cover one event and claim for all the insurance (for assets-you can have multiple life insurance policies)

-Having health insurance on top of your car insurance

Part 4-Structuring Business Activity

Ch.13 (The Agency Relationship) (pg.296):

You will have a principal (business, organization, individual) that will enter into a relationship with an agent in order to create legal relations with outside parties

(Ex. Students are the third parties at University because we are not under any contract. If teachers go on strike, we may not request compensation because it is a privilege to go to school, not a right. Classes would be postponed until the labour dispute is resolved)

4 Main Ways to Create Agencies

-By agreement (oral or written statement)

-By authority-power you possess and how much you can do

-Authority may be Actual (Express or Implied) or Apparent

-Implied Actual Authority has its terms referred by 3 conditions-

1) trade or practices

2) Necessities to execute the task

3) Work Activities (part of your tasks)

-Express Actual Authority pinpoints the details of what you're supposed to be doing

-By ratification

-When the agent exceeds its authority –the principle may ratify that excess so that they will be protected by the principle that elects to do so

-By necessity

-When there is actual urgency to protect the assets or the individuals involved

Power of Attorney Card- Keep in your wallet so that hospital may contact someone if you get injured

Duties of an Agent

-Act in a fiduciary capacity (work in the best honest interest of the other party)

-Avoid Conflicts of Interest

-Cannot serve to masters and principles at the same time when their interests are conflicting

-Do not profit from the principle

-Do not declare any secret commissions

-Required to always work for the employer, but declare any benefits or information

Duties of the Principal

1) Pay the agent for the service

a. Salary or commission

b. If you don't pay, there is liability

2) Provide Instructions

a. To guide the employee in how to do things

3) Provide the necessary training

a. In order to keep up with the changes that occur in almost all professions

4) Provide the necessary tools

a. Whatever you need to execute your duties

- 5) Reimburse for reasonable expenses (i.e. gas money for travel)
- 6) Secure and protect the agent against any claim including indemnify against losses
- 7) Assist the agent in the execution of the contract (i.e. drafting a logo for a firm; Are the colours acceptable?)

Liabilities of the Agent/Principal

- 1) Agent is inside the authority of the agency, the principal is liable
 - The employee screws up, the principal is liable
- 2) When there is a parent authority created by the principal (i.e., a guy in accounting who also does some marketing for the firm)
- 3) When the agent exceeds its authority and the principal ratifies it
- 4) When the agent exceeds authority by representing himself as the principal
 - Agent would be solely liable
- 5) When the principal is undisclosed, then in that capacity, the principal would still be liable if the agency is representing the principal (notion of an undisclosed principal)
pg.312
- 6) When the agent is representing himself where he has no authority to do so
 - Pretending to be an agent of a company you do not work for in order to be part of a deal
 - You may not have an association with a company but you are not a partner
 - You are liable to the third party (warranty of authority)

Part 4-Structuring Business Activity

Ch.14 (Business Forms and Arrangements) (pg.321):

What is a Partnership?

- A relationship between persons
- Contract can be in writing or verbal
- Contract by conduct
- Could include a joint venture

1st key element- Relationship between persons - contract that is verbal or in writing, or contract by conduct.

2nd key element- Putting things in common-assets(ie, money), intellectual property, ideas,labour, property → whatever you bring in, stays in the property and you can't take it back

3rd key element- Deals with business activity

1. There must be a single key occupation (i.e. Lawyers, Accountants)
2. Trade (ie. plumer)
3. Business venture (ie. owning a business)

-Cannot be illegal (drugs, illegal gambling operation->prosecution will go for the bookkeepers first and then all other witnesses/suspects)

4th key element- With a view to profit

By itself it is not a partnership, but if you push it to a higher level, it will become one:

Joint Tenancy-Tenancy in common-1 house owned by two people (husband and wife) is not a partnership, while owning several is (when they are used for rentals)

Sharing Gross Revenues-Every Party will deduct their own expenses while sharing Net Income in a partnership

Being Paid through Profits-not being paid on a weekly basis (paid at every quarter perhaps)

-Reimburse your expenses or investment in the business unless you can demonstrate that you would like to be a partner

Partnership is a firm (legal term of the business venture) (i.e. Law or Accounting Firms)
If not a firm, you'll be a corporation/company

LLP (Limited Liability Partnership)-Not responsible for the liabilities of your partners. Majority of firms are LLP's

Relationship between partners and outsiders:

Consequences:

- 1) Every partner is an agent of the firm. They all have a right to speak on behalf of the firm. If the 3rd party is not aware of the limitation, the partners are held liable.
- 2) Every partner is jointly liable for the firm's activities. If the firm has expenses, partners are liable
- 3) Partners are jointly and severally (you can claim the other persons portion of the debt but you still have to pay it) liable for every tort committed by a partner
- 4) Management Decisions are made by the majority but we may change this by condition
- 5) All partners are equal but this may be changed by convention
- 6) Terminate Agreement by death, insanity, incapableness by agreement

"You don't know who's who in the zoo!"-Gilles

CLASS EXAMPLES

Marriage is a contract, 50% of people will get a divorce. You will probably lose your marriage, so write a prenup. Other party can take half of your stuff. In hope and love you sign everything
Mortgages last longer than marriage in Canada.

In Vancouver you pay 83% of your monthly income to housing
In Ottawa, 52%

Someone is always a step ahead of you

Canada has the best banks/banking system in the world

Last year Gilles found 3 iPhones and 2 wallets afterwards. He is not legally obliged to return the items (but he did, and received no thanks).

Quebec is going towards a referendum. Last time only 51% voted against separation. This time? Quebec was basically cut out of the new constitution last time, after all the other Provinces made a secretive deal with the government.

Quebec government is the largest player on the Canadian stock market.

In the 1980s the government passed a law that said anything the Catholic school taught was held to be true, to protect the catholics (mainly francophone), in Ontario.

If the housing price drops, and your mortgage costs more than the house is worth, what do you do?

Those who have money already know what to do, others follow-> When the Berlin wall fell, rich west Germans bought up land on the other side, since the deutschmark was 10x more valuable than east germany's currency.

A man found out his wife and best friend, both partners in his restaurant business, were having an affair behind his back. He told his wife that he wanted to just let it go and forgive her. Secretly started stashing money with his mom. He then began to rack up huge bills on invoices and training at the restaurant, but could not pay them from the partnership. The business went bankrupt, and the restaurant was forced to shut down. The partnership collapsed, but with the money he had saved under the mattress he was able to quickly restart the business on his own, thus avoiding both: divorcing his wife and losing half the business to her; and leaving the partnership and taking only his small share of the business – he did this so they would get nothing out of it.